

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS**

SHERMAN DIVISION

DATE: June 24, 2009

JUDGE
MICHAEL H. SCHNEIDER

COURT REPORTER: Jan Mason
COURTROOM DEPUTY: Linda Pritchard

MINI MELTS, INC.

vs.

RECKITT BENCKISER, INC.

CAUSE NO:
4:07CV271

ATTORNEY FOR PLAINTIFF	ATTORNEYS FOR DEFENDANT
ROBERT OAKE, JR.	CLYDE SIEBMAN LARRY PHILLIPS STEFAN V. STEIN DEBRA FAULK

THIRD DAY OF JURY TRIAL

On this day, came the parties by their attorneys and the following proceedings were had:

OPEN: 9:00 A.M.

ADJOURN: 7:20 P.M.

TIME:	MINUTES:
9:00 am	Case called. Jury in.
9:01 am	Continuation of direct examination of Marylou Arnett by Ms. Faulk.
9:24 am	Defendant's Exhibits 274, 275, 277, 280 and 281 identified by the witness.
9:34 am	Defendant's Exhibits 282 and 284 identified by the witness.
9:51 am	Defendant's Exhibit 2 identified by the witness.
9:53 am	Defendant's Exhibit 8 identified by the witness.
10:02 am	Defendant's Exhibits 51, 52 and 53 identified by the witness.
10:15 am	Recess taken.

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TIME:	MINUTES:
10:35 am	Court reconvened. Jury in.
10:35 am	Continuation of direct examination of Marylou Arnett.
10:43 am	Defendant's Exhibit 1238 identified by the witness.
10:52 am	Defendant's Exhibit 242 identified by the witness.
10:58 am	Cross-examination of Marylou Arnett by Mr. Oake.
11:14 am	Plaintiff's Exhibit 36 identified by the witness.
11:18 am	Plaintiff's Exhibit 38 identified by the witness.
11:32 am	Plaintiff's Exhibit 419, a Mucinex box, offered and admitted without objection.
11:37 am	Plaintiff's Exhibit 34 identified by the witness.
11:45 am	Recess taken.
1:00 pm	Court reconvened. Jury in.
1:00 pm	Continuation of cross-examination of Ms. Arnett.
1:09 pm	Plaintiff's Exhibit 44, not previously admitted into evidence, identified by the witness. Plaintiff's Exhibit 44 offered and admitted into evidence.
1:36 pm	Plaintiff's Exhibit 39 shown to the witness. Exhibit 39 offered into evidence. Objection by Ms. Faulk. Objection sustained and exhibit not admitted.
1:47 pm	Witness stands aside.
1:47 pm	James Berger, sworn, called as a witness by the defendant. Direct examination by Mr. Stein. Mr. Berger offered as an expert witness without objection from the plaintiff.
1:56 pm	Defendant's Exhibit 1259, expert report of Mr. Berger, handed to the witness.
2:15 pm	Recess taken.
2:37 pm	Court reconvened. Jury out
2:37 pm	Ms. Faulk announced that the parties have reached an agreement not to recall Ms. Arnett. The Court stated that she may be excused.
2:38 pm	Jury in.
2:38 pm	Continuation of direct examination of Mr. Berger by Mr. Stein.
2:55 pm	Defendant's Exhibits D-R and D-S offered and admitted without objection.
3:11 pm	Cross-examination of Mr. Berger by Mr. Oake.

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TIME:	MINUTES:
3:34 pm	Plaintiff's Exhibit 10, admitted for demonstrative purposes only, was shown to the witness.
3:40 pm	Jury out.
3:40 pm	The Court addressed the parties regarding presentation of exhibits. Mr. Oake responded.
3:41 pm	Recess taken.
3:55 pm	Court reconvened. Jury in.
3:56 pm	Continuation of cross-examination of Mr. Berger by Mr. Oake.
3:58 pm	Redirect examination of Mr. Berger by Mr. Stein.
4:00 pm	Witness stands aside.
4:01 pm	Deposition testimony of Brad Cole.
4:05 pm	Defendant rests.
4:05 pm	Jury out.
4:05 pm	Plaintiff's motion for directed verdict by Mr. Oake. The Court directed a verdict on the initial application fraud for trademark by the company Mini Melts. The Court finds that the representation that the mark Mini Melts was in use and commerce on October 28, 1999 is not a false misrepresentation.
4:13 pm	Plaintiff moves for directed verdict on the issue of fraud in regard to Sections 8 and 15. Motion denied.
4:15 pm	Mr. Stein re-urged defendant's motion for directed verdict. The Court granted motion for directed verdict on punitive damages.
4:17 pm	Mr. Stein addressed federal trademark infringement under the Lanham Act and unfair competition. On confusion the Court denies motion for directed verdict. On the fraud issue the Court denies motion for directed verdict.
4:21 pm	Mr. Stein addressed state and federal unfair competition. The Court denied the motion.
4:23 pm	The parties discussed proposed scheduling issues. The Court will allow each side 30 minutes for closing arguments.
4:25 pm	Jury in.
4:25 pm	The Court addressed the jury regarding scheduling.
4:28 pm	Jury out.

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TIME:	MINUTES:
4:30 pm	The attorneys met regarding the jury instructions.
6:48 pm	The Court discussed proposed changes to the proposed jury instructions.
7:03 pm	Objection to the Charge by Mr. Oake. Mr. Stein responded.
7:06 pm	Mr. Siebman addressed objections to the charge. Mr. Oake responded.
7:17 pm	Mr. Oake addressed the issue of whether he should have been a witness in the case. The Court stated that it would not be permitted.
7:20 pm	Court adjourned.

DAVID J. MALAND, CLERK

BY: Linda Pritchard
Courtroom Deputy Clerk